UNITED
NATIONS

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Economic and Social
Council

Distr.
GENERAL

E/CN.4/1999/NGO/106
17 March 1999

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-fifth session
Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement submitted by Article 19, International Centre against Censorship, a non-governmental organization on the Roster

The Secretary-General has received the following written statement, which is circulated in accordance with Economic and Social Council resolution 1996/31.

[11 March 1999]

GE.99-11527 (E)

Introduction

1. Article 19, the International Centre against Censorship, urges members of the United Nations Commission on Human Rights to support the renewal of the mandate of the Special Rapporteur on Nigeria at its Fifty-fifth session. 1/

2. The question of whether to renew the mandate of the Special Rapporteur on Nigeria will be addressed at a pivotal moment in Nigeria's history. Nigeria is awaiting the inauguration in May of a new civilian Government and President. While this is a time of hope for Nigeria, Article 19 and Media Rights Agenda are concerned that the international community should recognize that the imminent completion of the transition to civilian rule does not guarantee that democracy and human rights in Nigeria have been secured.

3. It may be argued by some parties at the Commission that what the new civilian dispensation in Nigeria needs is not further scrutiny but assistance from the international community. This would be a profoundly misguided view. Both will be required over the coming year. While the current transition to civilian rule has undoubtedly been an immense improvement upon that of the late General Sani Abacha, nonetheless it has been a flawed, "quick fix" process which leaves much still to be done if Nigeria's latest democratic experiment is not to be extremely short-lived. The terms and parameters of the current transition to civilian rule have been largely dictated by the Nigerian military. Furthermore, serious human rights abuses have continued - particularly in oil-producing areas in the south, where environmental and political protests by local communities have been intensifying.

Assessing the current "transition to civilian rule" through a "benchmarks" approach

4. Article 19 elaborated the following benchmarks for assessing the credibility of the current transition to civilian rule. In order for it to be credible there had to be:

(a) An end to arbitrary detentions and the release of all political prisoners;

(b) The repeal of key repressive decrees - in particular the State Security (Detention of Persons) Decree, No. 2 of 1984, the Constitution (Suspension and Modification) Decree, No. 107 of 1993 and the Federal Military Government (Supremacy and Enforcement of Powers) Decree, No. 12 of 1994;

(c) The publication of the 1995 draft Constitution so that it can be openly debated and, if agreed, amended to bring it into line with international human rights standards;

(d) The establishment of an agreed basis - for example, a sovereign national conference - for involving all interested parties in deciding how the "transition" should proceed;

1/ Article 19's statement is based on a common position agreed with Media Rights Agenda, a Nigerian non-governmental organization committed to the strengthening of media freedom in Nigeria.

(e) The creation of an open and fair electoral process, including for the registration of parties, overseen and supervised by a genuinely independent and impartial electoral commission.

5. How has the current transition to civilian rule initiated by General Abubakar measured up against these benchmarks?

6. There has been a dramatic reduction in the number of arbitrary detentions. With the release of a large number of remaining political prisoners in early March 1999, the vast majority have now been freed. However, the issue of repressive military decrees has barely been addressed. A barrage of decrees remain on the statute book, including those specified above. Other decrees which Article 19 believes should be repealed immediately in order to strengthen the current transition to civilian rule include: the Treason and Other Offences (Special Military Tribunal) Decree, No. 1 of 1986; the Treason and Treasonable Offences Decree, No. 29 of 1993; the Transition to Civil Rule (Political Programme) Decree, No. 1 of 1996; the Offensive Publications (Proscription) Decree, No. 35 of 1993.

7. The 1995 draft Constitution, which the Abacha Government intended would supersede the 1979 Constitution, has finally been published, but more than one version of the draft has apparently been in circulation. However, the conditions have not really existed for a full, open and informed public debate about the 1995 draft Constitution. Article 19 believes that promulgation of the 1995 draft constitution, even in revised form, by the Provisional Ruling Council (PRC) before it left power would be unacceptable. At the same time, substantial parts of the 1979 Constitution have remained suspended or amended by military decree. Our view is that the partial suspension of the 1979 Constitution should be immediately lifted. Once a democratically elected civilian government is in place, it should agree with all interested parties a mechanism for reviewing the 1995 draft and promulgating a new Constitution. A time-frame of one year should be set for this task.

8. The problem of what to do about the constitutional situation might be less acute had General Abubakar established a sovereign national conference which could have agreed how the current transition to civilian rule should proceed. However, he did not do so. The result is that the military has dictated the terms of the latest transition to civilian rule.

9. Finally, while the new transition programme is clearly far more inclusive than the discredited Abacha "transition", Article 19 shares the concerns of many Nigerian human rights and pro-democracy groups that the process has been too tightly controlled by the military. For example, describing the electoral commission that has been created as the "Independent" National Electoral Commission (INEC) does not in itself guarantee independence. An electoral commission should be seen to be completely impartial, yet at least three members of INEC have played prominent roles on a partisan basis in previous political processes.

10. Measured in this way, the current transition to civilian rule has not met the credibility benchmarks which the two organizations have adopted.

A post-transition agenda for reform

11. Given that Nigeria's current transition to civilian rule has failed to meet the above benchmarks, it is vital that the new civilian Government be urged to take immediate steps to do so. Once that minimum agenda has been fulfilled, it will be necessary for the new civilian government to initiate a comprehensive programme of human rights reform in order to reinforce Nigeria's transition to democracy. One key area will be the protection and strengthening of freedom of expression, including media freedom. Aside from the decrees mentioned above, which should be immediately repealed, there are a range of other military decrees and laws which require repeal or amendment if freedom of expression is to be adequately protected in future in Nigeria. They are:

The National Broadcasting Commission Decree, No. 38 of 1992
The Nigerian Press Council Decree, No. 85 of 1992
The Newspapers Decree, No. 43 of 1993
The Daily Times of Nigeria Ltd. (Transfer of Certain Shares), Decree No. 101 of 1979
The National Film and Video Censors Board, Decree No. 88 of 1992
The National Economic Intelligence Committee (Establishment, ETC), Decree No. 17 of 1994
The Federal Criminal Code, sections 373-81 [criminal defamation]
The News Agency of Nigeria Act (1976)
The Seditious Offences Act (1909)
The Federal Radio Corporation of Nigeria Act (1976)
The Nigerian Television Authority Act (1976)
The Official Secrets Act (1962)
The Defamation Act (1961)
The Printing Presses (Regulation) Act (1958)
The Wireless Telegraphy Act (1961)
The Obscene Publications Act (1962)
The Defamation Act (1961)

Continuing human rights abuses

12. When the Special Rapporteur on Nigeria visited Nigeria in November 1998, Article 19 asked him to raise the cases of two journalists who "disappeared" in 1996 and whose cases remain unresolved. They are Bagauda Kaltho, Kaduna correspondent of The News, and Chinedu Offoaro, a journalist with The Guardian. The Nigerian authorities have claimed that Bagauda Kaltho died while engaging in an act of terrorism. Both men are rumoured to be dead following their arrest by security agents. We have called on the Nigerian Government to institute an independent judicial inquiry into these "disappearances". So far, no such inquiry has been established. We call on the new civilian Government to do so.

13. While not on a comparable scale to the Abacha period, harassment and intimidation of critics of the military Government and the current "transition to civilian rule" has continued. For example, in August 1998, Okozie Amarube, a journalist working in Enugu State for News Service, a magazine that has been forthright in its criticism of officialdom and corruption, was shot by the police when they raided the magazine's printing press and later died in hospital from his wounds. The police have failed to investigate the incident, let alone bring the perpetrators to justice. In early February 1999, a team

of policemen stormed the editorial offices of The News and the premises of the Satellite Press, a printing company, and detained three journalists for several hours before releasing them. They also seized and confiscated copies of The News. The News was intending to publish a story on official corruption during the Abacha era. On 11 February 1999, Lanre Arogundade, Chairman of the Lagos State Council of the Nigeria Union of Journalists, was arrested and briefly detained, apparently in connection with his peaceful trade union activities. There have also been incidents of detention and harassment of journalists working in public broadcasting at state level. Finally, the Nigerian security forces appear once again to have been resorting to brutal methods of suppression of peaceful political protest in the Niger Delta.

Conclusion

14. Now is not the time to drop Nigeria from the agenda of the international community. Nigeria's current "transition to civilian rule" has been deeply flawed. The Special Rapporteur on Nigeria has an essential role to play in monitoring Nigeria's progress under the new civilian dispensation and in helping to ensure that its transition to democracy is not aborted before it has barely begun. The mandate should be extended for another year.